

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY**

**JOHN F. RHODES,**

**Plaintiff,**

**v.**

**CIVIL ACTION NO. 5:04-0498**

**JO ANNE B. BARNHART,  
Commissioner of the Social  
Security Administration,**

**Defendant.**

**MEMORANDUM OPINION AND ORDER**

By Standing Order entered on May 20, 2002, and filed in this case on May 20, 2004, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendation. Magistrate Judge VanDervort submitted his proposed findings and recommendation on August 1, 2005. In that Proposed Findings and Recommendation, the magistrate judge recommended that this court deny plaintiff's motion for judgment on the pleadings, deny defendant's motion for judgment on the pleadings, reverse the final decision of the Commissioner, remand this matter for further proceedings, and dismiss this matter from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Findings and Recommendation. No party has filed objections within the requisite period, and the failure of any party to file such

objections constitutes a waiver of such party's right to a de novo review by this court. Thomas v. Arn, 474 U.S. 140 (1985); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Having reviewed the Proposed Findings and Recommendation filed by the magistrate judge, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby DENIES plaintiff's motion for judgment on the pleadings (Doc. No. 16), DENIES defendant's motion for judgment on the pleadings (Doc. No. 22), REVERSES the decision of the Commissioner, REMANDS the case to the Commissioner for further proceedings as outlined in defendant's motion for remand, and DISMISSES this matter from the court's active docket.

The Clerk is directed to forward a certified copy of this memorandum opinion and order to all counsel of record.

IT IS SO ORDERED this 25th day of August, 2005.

ENTER:

David A. Faber

David A. Faber  
Chief Judge